

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION NO. 5:05-cr-00223

ROBERT MORRIS,

Defendant.

MEMORANDUM OPINION AND JUDGMENT ORDER

Pending before the Court is a motion, brought pursuant to 18 U.S.C. § 3582(c)(2), to reduce Defendant's sentence based on a subsequent reduction in the applicable sentencing guideline. On November 1, 2007, the United States Sentencing Guidelines were amended to reduce by two levels the guidelines in Section 2D1.1 for cocaine base (also known as crack). Subsequently, the Sentencing Commission amended Section 1B1.10 to make the crack amendment retroactive, effective March 3, 2008. Pursuant to a Standing Order entered on February 6, 2008, this case was designated for Standard consideration.

The Court has received and considered the original Presentence Investigation Report (PSI), original Judgment and Commitment Order and Statement of Reasons, plea agreement, and addendum to the PSI from the Probation Office, and received any materials submitted by the parties on this issue. The Court has also considered the applicable factors under 18 U.S.C. § 3553(a), consistent with § 3582(c)(2), and public safety.

The United States acknowledges in its memorandum [Docket 44] that Defendant is eligible for a sentence reduction.


Defendant acknowledges in his memorandum [Docket 45] that he is without sufficient time, while incarcerated, to enroll in and complete the Residential Drug Abuse Program, but indicates his consent to a 60-day placement in Transitions, a halfway house in Ashland, Kentucky, upon his release from custody. Defendant further indicates that he agrees to waive a hearing on the modification of the terms of his supervised release placing him in said drug treatment program.

By Memorandum Opinion and Order [Docket 46] entered on May 7, 2008, the Court directed Defendant to file a written waiver indicating his agreement to waive a hearing on the modification of the terms of his supervised release placing him in the drug treatment program at Transitions for 60 days following his release from federal custody. The Court received that waiver and, on July 10, 2008, entered an Order [Docket 47] modifying the conditions of Defendant's supervised release and directing that he be placed at Transitions on his date of release from federal custody. The Court has been informed by the United States Probation Office that a bed at Transitions will be available for Defendant's enrollment on August 1, 2008.

Based on the foregoing considerations, the Motion is **GRANTED**. The Court **ORDERS** that Defendant's base offense level be reduced by **2** levels, resulting in a new total offense level of **21**. It is further **ORDERED** that, effective **August 1, 2008**, Defendant's previous sentence be reduced to a period of **46** months, with credit for time served. Pursuant to the Order [Docket 47] entered July 10, 2008, upon release from custody, Defendant is **DIRECTED** to report to Transitions in Ashland, Kentucky, where he will reside for sixty days as a condition of his supervised release. This Order is subject to the prohibition contained within U.S.S.G. §1B1.10(b)(2)(C).

The Court **DIRECTS** the Clerk to send a copy of this Order to Defendant and counsel, the United States Attorney, the United States Probation Office, and the United States Marshals.

ENTER: July 16, 2008



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE